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5 In the Matter of

No. G02-45

6 THE APPLICATION REGARDING
7 THE CONVERSION AND
8 ACQUISITION OF CONTROL OF
9 PREMERA BLUE CROSS AND ITS
10 AFFILIATES
11

OIC STAFF'S RESPONSE TO
PREMERA'S MOTION FOR
REVIEW OF THE SPECIAL
MASTER'S CASE SCHEDULE
RECOMMENDATION ISSUED JULY
14, 2003

12 Premera Blue Cross and its Affiliates ("Premera") filed Premera's Motion for Review
13 of the Special Master's Case Schedule Recommendation which was received by the OIC Staff
14 on July 21, 2003. Pursuant to the requirements set forth in paragraph four of the
15 Commissioner's Seventh Order issued in this proceeding on April 10, 2003, the OIC Staff
16 files its response.

17 Premera seeks review and revision of the Special Master's recommendation in two
18 respects: (1) Rather than relying on a "trigger" date determined by the date the data
19 production phase of this proceeding is substantially complete as recommended on pages three
20 and four of the Special Master's Scheduling Recommendation issued on July 7, 2003,
21 hereinafter referred to as the "July 7 Recommendation," Premera contends that "a date
22 certain" be set for the hearing and that dates be set for "pre-hearing milestones." (2) Premera
23 further contends that the recommended time periods contained in the pre-hearing timeline be
24 cut in half.
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TRIGGER DATE

In the July 7 Recommendation, the Special Master established the trigger date to ensure that “[t]he Commissioner’s ultimate determinations in this conversion proceeding ... be made on the fullest possible record consistent with applicable law” July 7 Recommendation, page 2, lines 14 – 16. Therefore, he proposed a process for testing the privilege claims raised by Premera to protect “the integrity of this conversion proceeding ... and the sustainability of the Commissioner’s ultimate decisions....” July 7 Recommendation, page 2, lines 20 – 24. The case schedule recommendation issued on July 14, 2003, hereinafter referred to as the “Case Schedule Recommendation,” did not propose the trigger date but merely referred to the pertinent pages in the July 7 Recommendation. Thus, in conformity with the Commissioner’s Seventh Order, if the Special Master’s recommendation regarding the trigger date is disputed by Premera, the issue may only be raised upon a timely request by Premera for review of the July 7 Recommendation. The Commissioner extended the time for Premera to file a request for review of the July 7 Recommendation until July 28, 2003. The OIC Staff anticipates that Premera will raise this issue at the time it files a request for review of the July 7 Recommendation and reserves its right to respond at that time as permitted by the Commissioner’s Seventh Order. Premera’s request for review of the Special Master’s use of a trigger date in the Case Schedule Recommendation should be denied as premature or improper.

In the alternative, in the event the Commissioner determines that Premera’s request regarding review of this issue with respect to the Case Schedule Order is timely and proper, the OIC Staff urges that review be denied on the merits. Premera has failed to assert a single ground for abandoning the trigger date in favor of using a date certain for submission of the OIC Staff’s consultants’ draft reports and dates certain for pre-hearing milestones. The Special Master’s reasons for adopting a trigger date articulated in the July 7 Recommendation have not been contested by Premera in its motion for review of the Case Schedule

1 Recommendation. The OIC Staff hereby incorporates by reference the grounds asserted in
2 support of a trigger date that are contained in the OIC Staff's Proposals to the Special Master
3 Regarding Scheduling filed on June 23, 2003 and the materials submitted by the OIC Staff to
4 the Special Master on June 30, 2003.

5 **PRE-HEARING TIMELINE**

6 Premera asserts that because the OIC Staff's consultants agreed to submit draft reports
7 within thirty days of beginning work and the "many months" they have been reviewing the
8 proposal, six weeks to produce draft reports as recommended by the Special Master is
9 excessive. Premera's assertion is not accurate. Not all of the OIC Staff's consultants agreed
10 to deliver a draft report within thirty days; that is by December 1, 2002.¹ Moreover, implicit
11 in the retention of the consultants was the understanding that any reports submitted would
12 take into consideration all available relevant information. Clearly, the very purpose of this
13 proceeding would be defeated if reports are submitted that are based upon an incomplete
14 record. This understanding was made explicit in three of the contracts.² It is undisputed that
15 Premera failed to substantially comply with the OIC Staff's consultants' requests for data on

16 ¹ See Contract #03-23, Personal Services Contract Between State of Washington Office of Insurance
17 Commissioner and Keith Leffler, PhD., For the Benefit of the Washington State Attorney General's Office
18 (antitrust review) and Contract #03-24, Personal Services Contract Between State of Washington Office of
19 Insurance Commissioner and John R. Ellis, Special Assistant Attorney General, For the Benefit of the Washington
20 State Attorney General's Office (antitrust review).

21 ² Contract #03-17, Personal Services Contract Between the State of Washington Office of Insurance
22 Commissioner and PricewaterhouseCoopers for actuarial services and Contract #03-20, Personal Services
23 Contract Between the State of Washington Office of Insurance Commissioner and PricewaterhouseCoopers for
24 accounting services provide for delivery of draft reports by December 1, 2002 but also provide, in pertinent part,
25 as follows: "CONTRACTOR's compliance with the December 1, 2002 completion date is dependent upon
26 CONTRACTOR receiving all material data and information requested from ... the Premera Group If material
data or information is not received in a timely manner, the [OIC Staff] may consent to an extension of the
completion date and such consent shall not be unreasonably withheld." Exhibit "B" of Contract #03-18, Personal
Services Contract Between State of Washington Office of Insurance Commissioner and Cantilo & Bennett LLP
provides on pages 37 – 38, in pertinent part, as follows: "[Cantilo & Bennett] offers this proposal on the
assumption and condition that, if selected, it will be provided by the Premera Group ... in adequate time and form,
all of the documents and information necessary to comply with [the] deadline. Difficulty and delays in obtaining
such information ... (all of which are typical of Blue Cross conversions in [Cantilo & Bennett's] experience) will
have the potential of undermining substantially the ability of [Cantilo & Bennett] (or any contractor) to provide
the required deliverables by the specified date...."

1 or before December 1, 2002. It is also undisputed that Premera continues to withhold material
2 data and information based upon a claim of privilege. This has prevented the consultants
3 from completing their review.

4 With respect to the time periods for the remaining deadlines recommended by the
5 Special Master, Premera urges that they simply be halved. No grounds are presented in
6 justification for this severe result. Premera's position is arbitrary and unreasonable taking into
7 consideration the complexity of this proceeding.³

8 The OIC Staff requests that Premera's request for revision of the timelines, including
9 the time for submission of draft reports by the OIC Staff's Consultants, be denied.

10 DATED this ____ day of July, 2003.

11 Respectfully submitted,

12 OFFICE OF INSURANCE COMMISSIONER
13 STATE OF WASHINGTON

14
15 By: _____
16 John F. Hamje
17 Staff Attorney WSBA #32400
18 Legal Affairs Division
19 Office of Insurance Commissioner
20 360-725-7046
21 360-586-3109 (Facsimile)

22 ON BEHALF OF THE OIC STAFF

23 _____
24 ³ It should be noted that Premera's track record regarding the timelines it has previously urged in this
25 proceeding do not inspire confidence in its current proposal. For example, in Attachment "A" of the Joint
26 Proposal Regarding Discovery and Hearing Schedule filed by the parties on February 27, 2003, Premera proposed
a timeline with a projected hearing date of June 9, 2003. As of this date, the process contemplated by the Joint
Proposal that included the issuance of the Commissioner's Eighth Order: Protective Order on June 13, 2003, is yet
to be completed.

CERTIFICATE OF SERVICE

Pursuant to WAC 10-08-110(3), I certify under penalty of perjury under the laws of the State of Washington that this instrument was served upon all parties of record in this proceeding by transmitting a copy thereof by FAX, and, on the same day, mailing a copy thereof, properly addressed with postage prepaid, to the attorney for each party to the proceeding.

Dated: _____, 2003
At Tumwater, Washington

John F. Hamje